

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF TEXAS  
3 HOUSTON DIVISION

3 ALBERTO PATINO, ET AL \* 4:14-CV-03241  
4 VS. \* 1:19 p.m.  
5 CITY OF PASADENA, ET AL \* FEBRUARY 10, 2016

6 DISCOVERY HEARING  
7 BEFORE THE HONORABLE LEE H. ROSENTHAL  
8 Volume 1 of 1, Pages 1 - 47

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1

**PROCEEDINGS**

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4

THE COURT: Good afternoon. Go ahead and state your appearances for the record; and then, you may be seated.

01:38:39

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MR. NAJVAR: Jerad Najvar for Citizens to Keep Pasadena Strong and also for Citizens for Positive Change.

7

THE COURT: All right.

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MR. HERRERA: Ernest Herrera and Nina Perales for the plaintiffs.

01:38:50

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THE COURT: Very good. I have now had a chance to go through the supplemental filings and to review the materials that were submitted in camera, and I have got some questions on these. So -- and I want to take them up kind of one at a time.

01:39:25

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17

Let's start with the question of the invoices themselves. What is the relevance of the amounts charged for the consulting services provided?

18

19

MR. HERRERA: Your Honor, the invoices would show what exactly was done by the different vendors.

01:39:48

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21

22

THE COURT: They don't. They don't. I mean, they are very -- they show what was done but not much. There is very little detail in the invoices.

23

24

25

MR. HERRERA: Your Honor, they would also show whether or not the pact is paying for these -- who is the source for the payment of these services.

01:40:07

1 THE COURT: No, they don't. They simply show --  
2 I mean, it's billed to CKPS. They don't show anything  
3 beyond that. They don't show the payment, just the  
4 invoices.

01:40:19

5 MR. HERRERA: That would be the type of  
6 information that the plaintiffs would be looking for.

7 THE COURT: So the amounts aren't relevant.

01:40:32

8 MR. HERRERA: The amounts would be relevant to  
9 match up with the campaign finance disclosures to make  
10 sure that the pact is who is paying for these.

11 THE COURT: Do you have any basis to dispute that  
12 it was Citizens to Keep Pasadena Strong? And you know who  
13 funded Citizens to Keep Pasadena Strong.

01:40:47

14 MR. HERRERA: No, Your Honor. Plaintiffs don't  
15 have any doubt about that or reason to doubt that.

16 THE COURT: Then I don't think there is a need  
17 for the amounts. But I do agree that the invoices with  
18 the amounts redacted, but there is nothing privileged  
19 about them under the First Amendment. They don't reveal  
20 anything.

01:41:09

21 MR. NAJVAR: No. I mean, I noticed some  
22 handwritten notes on there; but I think they are very  
23 minimal, just noting some dates and things.

24 THE COURT: Received and the check.

01:41:20

25 MR. NAJVAR: I don't think -- from the

1 descriptions that I saw I don't think that they -- I think  
2 you are right. They don't add a whole lot other than what  
3 is already recorded.

01:41:29

4 THE COURT: There is nothing privileged. You can  
5 redact the amounts if you want to. If you don't -- if you  
6 are not worried about that because so much information  
7 about the finances has already been disclosed, that's  
8 fine, too.

9 MR. NAJVAR: Yes, Your Honor.

01:41:42

10 THE COURT: All right. But they are not  
11 privileged.

12 Moving on to the second -- I'm just going through  
13 these in the order of the folders that you produced.  
14 Yates 234 to 255 appear to be e-mails and ads relating to  
15 Mr. Carmona's March 2015 campaign materials, Emilio  
16 Carmona. And they are just putting together information,  
17 photographs and information on some material to include in  
18 the ads. I don't see any strategy revealed; but I'm not  
19 sure what is relevant in the March 23rd, 2015, election of  
20 Mr. Carmona.

01:43:00

21 MR. HERRERA: Your Honor --

22 THE COURT: There is no reference to anything  
23 relating to the amendment to the city charter, and perhaps  
24 you can enlighten me. Was Mr. Carmona running in one of  
25 the new districts, the at-large districts; or was he

01:43:15

1 running in a single-member district?

2 MR. HERRERA: Your Honor, he was running in a  
3 single-member district.

4 THE COURT: All right.

01:43:24

5 MR. HERRERA: Your Honor --

6 THE COURT: Tell me what would be --

7 MR. HERRERA: Even though they don't have  
8 strategy material in them, if you are saying they do not  
9 involve strategy, they would still be relevant because  
10 they would go to slating.

01:43:36

11 THE COURT: Slating?

12 MR. HERRERA: Slating evidence, Your Honor.

13 THE COURT: In this context you mean selection of  
14 a candidate for a particular appeal?

01:43:46

15 MR. HERRERA: Well, more specifically to the  
16 Senate factors of the Voting Rights Act, Your Honor, of a  
17 Section 2 claim. It would go to showing that there were  
18 slating activities that excluded candidates of choice of  
19 the Latino community.

01:44:03

20 THE COURT: How would it show this? This is a  
21 photograph to include of Mr. Carmona looking at papers.

22 MR. HERRERA: Right, Your Honor. But it would  
23 show he was on the slate that ran together. Furthermore,  
24 it would --

01:44:17

25 THE COURT: There is no dispute about who is on

1 the slate that ran together.

2 MR. HERRERA: It would show, Your Honor, the  
3 senders and recipients of the e-mails of the people who  
4 are responsible for assembling the slate in addition to  
5 that.

01:44:30

6 THE COURT: This is a -- these are the  
7 individuals who you already knew were involved. And they  
8 are essentially Mr. Richard Scott, who has already been  
9 identified and his role has been made clear. And --

01:44:51

10 MR. HERRERA: I'm sorry, Your Honor.

11 THE COURT: -- Sam Safety? Who is  
12 SamSafety@aol.com?

13 MR. HERRERA: Your Honor, plaintiffs do not know  
14 who SamSafety@aol.com would be.

01:45:02

15 THE COURT: Does the defendant know?

16 MR. NAJVAR: It's Richard Scott. He is  
17 identified in the log.

18 MR. HERRERA: Your Honor, Richard Scott,  
19 additionally, we don't believe communications with Richard  
20 Scott would be privileged because he is a third party to  
21 this political committee.

01:45:14

22 THE COURT: Why would it be privileged?

23 MR. NAJVAR: The Perry decision --

24 THE COURT: It's not internal.

01:45:26

25 MR. NAJVAR: Well, it still -- it goes to -- the

1 First Amendment privilege extends to anybody who is  
2 participating in strategy discussions or --

3 THE COURT: But this is not strategy.

01:45:37

4 MR NAJVAR: If a particular e-mail wouldn't  
5 involve strategy, then I agree it wouldn't be privileged.

01:45:56

6 THE COURT: This is not -- this is -- I mean,  
7 there is discussion of -- there is an exchange of  
8 information to put in an ad. It appears to be the  
9 information that was, in fact, put in the ad. I don't see  
10 any evidence of strategy in that, I mean, in any kind of  
11 privileged sense. It doesn't reveal anything about the  
12 overall strategy of the campaign one way or the other, as  
13 best I can tell.

01:46:19

14 Now, you all know better than I do about that; but  
15 there is nothing here that is, in essence, secret because  
16 it is information that was used in the -- or versions of  
17 it that were used in the materials that were published.

01:46:40

18 MR. NAJVAR: And this small batch of e-mails does  
19 -- I just reviewed them on my computer. There is very  
20 minimal discussion. It looks like mostly forwarding and  
21 attachments that were included.

01:47:01

22 THE COURT: It is certainly not privileged, that  
23 I see, by any First Amendment claim simply because there  
24 is nothing in it that would be revealing -- well, there is  
25 nothing in it inconsistent with any privilege, assuming



1 one would even apply to the nature of these  
2 communications.

01:47:17

3 MR. NAJVAR: For this -- if it were a larger  
4 batch of e-mails that showed -- even if it were the same  
5 kind of things, I would argue it could be privileged if it  
6 shows timing and, you know, who is talking to whom, who is  
7 providing information and that.

01:47:32

8 THE COURT: It doesn't disclose any information  
9 that wasn't already available about who was talking to  
10 whom, to Mr. Yates and Mr. Scott in this instance; getting  
11 some information, publicly-available information from  
12 someone at the city, what a particular ordinance says.

01:47:52

13 MR. HERRERA: Your Honor, plaintiffs are not sure  
14 that it involves publicly-available information.

15 THE COURT: This is an ordinance. The only other  
16 thing that's attached is the ordinance itself. That is  
17 publicly available. Now, which ordinance it is is one  
18 referenced in the ad that I believe did go out to members  
19 of the public.

01:48:10

20 MR. HERRERA: Right.

21 THE COURT: But I just don't see any basis in  
22 which to withhold because there is any kind of a threat to  
23 any privilege that is revealed -- privileged communication  
24 revealed by these communications.

01:48:29

25 MR. NAJVAR: Again, I don't want to concede that

1 point with respect to if it were a larger batch like we  
2 have that --

01:48:39

3 THE COURT: I was looking at the e-mails that  
4 were actually submitted. That's why I reviewed them in  
5 camera so I could make a more nuanced and fact-specific  
6 assessment.

7 MR. NAJVAR: Yes, Your Honor.

01:48:51

8 THE COURT: Applying the Perry test, which again  
9 I would note the Fifth Circuit itself has not applied.

10 In fact, I don't have that folder. Would you bring it  
11 to me, please, sir. It's on the desk.

01:49:26

12 All right. Turning now to the 2013 folder of ads and  
13 e-mails, these are CKPS 92-162 and 221. These appear to  
14 be e-mails between Mr. Yates and Mr. Spencer Neumann; and  
15 I gather that he is at Neumann & Company, the mail list  
16 people, the vendor.

17 MR. NAJVAR: That's correct.

01:49:45

18 THE COURT: All right. And these are described  
19 as different ads. They are dated in 2013; and they are  
20 described as different advertisements that deal with the  
21 candidacy of Don Harris, in opposition to that candidacy  
22 in 2013.

01:50:39

23 There is discussion of certain aspects of the  
24 advertisements such as -- but the bulk of these don't deal  
25 with any strategic decisions other than the decision

1 whether to -- other than the need to ensure the factual  
2 accuracy of fact statements and to check on the historical  
3 accuracy of statements made about actions taken in the  
4 past in order to avoid any exposure to a defamation claim.

01:51:22

5 What is the First Amendment implication of that?

6 MR. NAJVAR: Well, although the e-mails are --  
7 they are including need for legal review. But the chain  
8 of e-mails shows variations of the ads. They are changed  
9 over time.

01:51:43

10 THE COURT: But they are very minor, and you  
11 would know better than I do about the variations between  
12 what was published and what wasn't published. Can you  
13 address that?

01:51:58

14 MR. NAJVAR: It was very minor. Most of the time  
15 it was moving the order of things or it was changing a  
16 couple of lines. But that is the kind of thing, the kind  
17 of statements that are put out to the public. And what is  
18 decided to excise and what is decided to include in a  
19 final advertisement is the kind of thing that is a  
20 strategy decision made by the people internal to the pact.  
21 Unless they can show that --

01:52:13

22 THE COURT: That's a very broad description of  
23 strategy, and that's my concern. But taking that as  
24 correct, I find it difficult to conclude that disclosing  
25 these kinds of very minor tweaks through draft

01:52:49

1 advertisements or mailings -- that I would note do not  
2 refer to the particular issues involved here -- do not  
3 appear to present a reasonable likelihood of chilling an  
4 associational right. And I'm concerned about that unless  
5 you accept that any disclosure would chill -- any threat  
6 of possible disclosure in future litigation would chill  
7 associational rights.

8 MR. NAJVAR: Well, that is, in fact, our claim.

9 THE COURT: I understand that, but I find that a  
10 very dubious claim in light of the evidence supporting it.  
11 I think that there is a -- you've certainly made a broad  
12 statement to that effect. But the mere possibility that  
13 compelled disclosure would deter membership or deter  
14 methods of communication because there would be a  
15 possibility that in future litigation under -- if the  
16 First Amendment associational privilege applied that there  
17 would be an ad hoc balancing that might require the  
18 disclosure of some of the communications, I find it very  
19 difficult to conclude that that mere possibility, which is  
20 what Perry recognizes, would chill associational rights as  
21 applied to this kind of document.

22 MR. NAJVAR: Well, part of the problem is that in  
23 order to even get to that point we have been through three  
24 hearings; and my clients have incurred legal fees. We  
25 have had to put these together.

1 THE COURT: The fact that --

2 MR. NAJVAR: I realize the burden isn't  
3 particularly relevant to that balancing, but it is -- it  
4 should go to the factor of whether it realistically can  
01:55:03 5 chill somebody and make them decide maybe rather than  
6 sending e-mails, which is easier than meeting in person,  
7 maybe they will just meet in person. Maybe it makes it  
8 harder to associate for these purposes. That is the kind  
9 of chill that is also relevant.

01:55:16 10 THE COURT: I'm also am not sure that these are  
11 really relevant either because the tweaks are so minor,  
12 but what we are arguing here is the First Amendment  
13 associational rights. I think they are relevant. I do  
14 not think that they are likely to assist you in any  
01:55:33 15 material way. So the balance of your need is fairly  
16 minimal --

17 MR. HERRERA: Your Honor, I --

18 THE COURT: -- once you get to the balancing  
19 factors. That is not true for other e-mails that we're  
01:55:47 20 about to discuss.

21 MR. HERRERA: Yes, Your Honor. But if plaintiffs  
22 may, the pact's targeting of the incumbent of a Latino  
23 majority district is part of the totality of the  
24 circumstances.

01:55:59 25 THE COURT: No. I understand that. I'm saying

1 that I agree that they are relevant.

2 MR. HERRERA: Thank you, Your Honor.

3 THE COURT: I agree. I wanted to be more precise  
4 than I was initially about that. But the question is the  
5 balance of the factors. Yes, they are relevant. The need  
6 for the information, I think here it is a little bit more  
7 difficult to determine that. Whether it's available from  
8 other sources, I don't believe it is. That weighs in  
9 favor of disclosure. The nature of the information

01:56:09 10 sought, it is not highly privileged because it does not  
11 involve or reveal core associational privileges or  
12 activities protected by the First Amendment.

13 And did the defendant place the information in issue?  
14 Yes, I think the state of mind relating to the campaign  
01:56:54 15 activities is certainly at issue. And it's unclear who  
16 placed it at issue, but I'm not sure that that matters.  
17 It is clearly an issue in the lawsuit. It's a little bit  
18 unclear whether it goes into -- it goes to relevance or  
19 something else in the relationship of those two factors.

01:57:23 20 So, I do think that there is a need that might  
21 outweigh any particular First Amendment associational  
22 privilege on these documents. And I'm doing these on a  
23 document category by document category basis.

24 MR. NAJVAR: Your Honor, just to clarify --

01:57:44 25 THE COURT: Now, one other point on some of

1 these. To the extent -- and I'm looking in particular at  
2 CKPS 137. Mister -- it's communication between  
3 Mr. Neumann and Mr. Najvar. Najvar, I guess. But it is  
4 about a matter of what election law requires to be  
5 disclosed. And the particular issue is -- it's unclear if  
6 it is a matter on which Mr. Najvar weighed in as an  
7 attorney or weighed in as the treasurer of CKPS or whether  
8 those can be meaningfully separated.

9 It is also unclear whether Mr. Neumann as the vendor  
10 is -- if this even a communication that would be protected  
11 by any kind of work product or attorney-client but rather  
12 waived because it was sent to a vendor.

13 So I believe it is probably waived by being sent to a  
14 vendor. It is not communication with a client, and it is  
15 disclosed work product. It is a statement by Mr. Najvar,  
16 who is obviously an attorney.

17 MR. NAJVAR: Many of these e-mails do include me.  
18 It's not just the issue of reporting compliance. It also  
19 goes, as you mentioned, to the issue of defamation and the  
20 factual substantiation. And I have always considered the  
21 vendors to the pact as an agent of the pact because they  
22 are the ones -- they are the ones doing this. They are  
23 hired by the pact to do the work just like --

24 THE COURT: I'm not sure. Unless you give me  
25 authority for that, I'm not confident that that's correct

01:59:55

1 as a matter of privilege law. You may be right that they  
2 are agents of the pact for the purpose that is that they  
3 are hired to do -- to perform acts for money on behalf of  
4 the pact. But I don't understand that that would  
5 necessarily cloak them with the privilege that the pact  
6 itself would enjoy in its communications with you as the  
7 attorney. Certainly -- but I am happy to look at  
8 authority to that effect, if you can produce it.

02:00:14

9 MR. NAJVAR: I will be glad to look that one up.

10 THE COURT: All right. I don't know if the  
11 plaintiff has authority to that effect already.

12 MR. HERRERA: No, Your Honor.

13 THE COURT: All right. I think you better look  
14 at that before those are required to be produced.

02:01:03

15 Okay. The third issue for the third folder are 2013  
16 ads. They deal -- again, Mr. Neumann is involved heavily.  
17 They are drafts of ads relating to primarily Mr. Harrison  
18 -- and then, what district was he running? This is  
19 obviously before the city charter was amended.

02:02:12

20 MR. HERRERA: In the previous map, Your Honor, I  
21 believe that would have been District D, which is, of  
22 course, a Latino majority district.

02:02:31

23 THE COURT: There is nothing -- I would note that  
24 there is nothing -- a lot of the -- a lot of the subjects  
25 and indeed the communications themselves appear to be



1 duplicates of what was included in the earlier folder, and  
2 none of them appear to deal with any issue that, as far as  
3 I can tell, is specifically addressing any issue relating  
4 to on its face, in any event, or even below that deals  
5 with racial matters.

02:04:02

6 The target, the subjects -- and, again, these are not  
7 very different from the ads that, in fact, went out. The  
8 mailings that were used deal with what is just in those  
9 mailings, funding for police and fire departments, the  
10 kind of who owns the trash cans that Pasadena city  
11 residents receive from the city, those kinds of matters  
12 with respect to -- and prior conduct by the candidate,  
13 Mr. Harrison, that apparently drew criticism in the past.

02:04:21

14 There are also -- there is also correspondence  
15 relating to Cody Ray Wheeler; and, again, this is more  
16 overtly partisan in that it is -- it ties Mr. Wheeler and  
17 the opposition to him to prior votes in the democratic  
18 primary and what -- and its relation and its tie,  
19 obviously, to President Obama and various organizations  
20 that are highlighted in the ads that did go out. And  
21 there is some editorial comment on the ad content.

02:05:09

02:06:07

22 Who is mister -- again, these are, I believe,  
23 within -- to the extent there is a First Amendment  
24 associational privilege implicated by this kind of  
25 discussion of the content of advertisements and the -- and

02:06:47

1 mailings for the 2013 election that --

2 Steven, do you have a copy of the revised timeline  
3 handy?

4 THE CLERK: I do.

02:07:23

5 THE COURT: Thank you.

6 To the extent the privilege applies that there is a  
7 prima facie showing -- although I don't, again, see a  
8 direct threat -- the plaintiff here does have a clear  
9 interest in obtaining the disclosures; and I think that

02:07:59

10 any deterrent effect on the free exercise of  
11 constitutionally protected rights is, again, so minimal  
12 that -- and because there is no alternative means to get  
13 this information, I do believe that the interests weigh in  
14 favor of requiring the disclosure.

02:08:20

15 Again, having said that, that is subject to the review  
16 to ensure that there are no privileged communications by  
17 way of attorney-client privilege that would not be subject  
18 to the balancing and, number two, that there would not be  
19 -- and subject to, for all of these, the entry of a

02:08:43

20 protective order that would limit the information to use  
21 within this lawsuit, prevent its dissemination outside  
22 this lawsuit and prevent any reference by parties or  
23 others to the contents outside this -- the purposes of  
24 this lawsuit and subject to the protective order.

02:09:13

25 So to the extent that there would be a requirement for

1 prior court approval of certain kinds of statements  
2 concerning the contents, I would be happy to entertain  
3 those requests; but I think that they are -- with them  
4 that they would vary, provide robust protection against  
5 any concern of deterrence of communications that would be  
6 -- in the future that would be protected by the First  
7 Amendment because it is so limited in distribution.

8       There could be no competitive disadvantage inflicted  
9 on Mr. Yates, as he testified yesterday, because the  
10 information would not be revealed to competitors. Further  
11 undermining any showing of deterrence.

12       The next category, which is Yates 324 through 374,  
13 deals with communications in March of 2013 relating to ads  
14 in opposition to Mr. Harrison and to Mr. Wheeler, very  
15 similar to what we discussed before, and to calls simply  
16 supporting Mr. Isbell's re-election that -- with a script  
17 that is very bare bones. And bare bones in the sense of  
18 only making very narrow requests such as to place a yard  
19 sign and not going into any additional information about  
20 positions, issues, policies, views, anything else. Bare  
21 bones as can be.

22       The same analysis that I went through a moment ago  
23 would appear to apply identically to this category of  
24 e-mails, again subject to the protective order and to  
25 review to ensure that there are no attorney-client or

1 work-product protected communications. I believe that  
2 there is a basis for disclosure.

02:11:56

3 The next category, Fall of 2013, documents that are a  
4 little hard -- it looks like Yates 1 through 166. Now,  
5 these are much more central to the plaintiffs' claims and,  
6 therefore, the case for compelled disclosure even against  
7 the First Amendment associational privilege invoked by the  
8 defendants is even stronger because these are, many of  
9 them, e-mails and relating to communications, mailings,  
10 ads about the city council charter that -- the city  
11 charter amendment to change the voting method to include  
12 three at-large districts.

02:12:26

13 MR. NAJVAR: Well, Your Honor, what range of  
14 documents?

02:12:51

15 THE COURT: Yates 1 to what appears to be 166.  
16 And I believe that the case for compelled disclosure as to  
17 this group of documents is the strongest and the easiest  
18 to resolve because of that, because they are central to  
19 the very claim that is made in this case, that the  
20 decision to propose to city council to obtain its approval  
21 and then to put to the voters the referendum on the change  
22 to the city charter was intentionally directed to diluting  
23 Hispanic voting strength.

02:13:23

02:13:46

24 So I am going to compel the disclosure, again subject  
25 to the protective order and attorney-client protections

1 and work-product protections.

2 MR. NAJVAR: I just want to clarify for the  
3 record. The first -- there are two -- within that range,  
4 the larger range, there is the 1 through 49 from the 2013  
5 time period.

02:14:00

6 THE COURT: Yes.

7 MR. NAJVAR: And that is --

8 THE COURT: But then many of the later ones --  
9 and you are right. 62, for example, deals with March of  
10 2015 and the election then. But much of the -- but the  
11 subject of the e-mails and the attachments includes  
12 references to positions taken on the city charter  
13 amendment back when it was approved.

02:14:08

14 So for that reason I think that the case for compelled  
15 disclosure applies in the same fashion. Not all of the  
16 2015 communications have that reference at all but many do  
17 and they are within the -- and they fall within the -- and  
18 because the campaign is the same as the campaign that  
19 included those references, I think the case for disclosure  
20 is a strong one.

02:14:35

02:15:04

21 There are some results of calls about at-large  
22 district elections; and again, I think that that is -- I  
23 think that that does perhaps implicate an associational  
24 privilege. Assuming it does, I don't -- again, I see a  
25 particularized need because the focus was made on the

02:15:31

1 comparing the results in at-large districts to other  
2 districts.

3 So again, subject to the same conditions, Yates 1  
4 through 162 would have to be produced.

02:16:02

5 Yates 167 to 204 are 2015 e-mails. I don't see any of  
6 the same kind of references that were in the prior set  
7 that I referred to. There are discussions of choices  
8 involving the appearance of various mailings and ads,  
9 color used and things like that. Again, those hardly seem

02:16:36

10 the stuff of strategic choices that need -- that are  
11 secret sauce in any fashion.

12 On the other hand, they do loosely fall within a broad  
13 concept of internal communications about political  
14 communications with the public. It is unclear the extent  
15 to which these ads that are discussed deviate or vary from  
16 what was ultimately published in any material or

02:17:05

17 substantive way; but to the extent that the privilege has  
18 been shown, that there has been a prima facie showing that  
19 the privilege applies, I don't see, again, because of the  
20 restrictions that I have put on release or lack thereof,  
21 disclosure.

02:17:26

22 And because of the absence of the plaintiffs' ability  
23 to get what are relevant documents because they do reveal  
24 how the campaigning was conducted in the at-large

02:17:52

25 districts that were newly created because of the city

1 council amendment -- the city charter amendment, excuse  
2 me, that counsel approved and the voters approved, I do --  
3 and because the plaintiffs have no ability to get this  
4 information from any other source I believe it needs to be  
5 produced subject to the prior conditions I have  
6 identified.

7 There are some invoices in here. Again, you may  
8 redact the amounts if that is appropriate.

9 MR. NAJVAR: Your Honor, may I ask you a question  
10 about that? We briefed this issue of relevancy in terms  
11 of in context of a ballot measure election and they filed  
12 a response and they never addressed that point.

13 THE COURT: I do believe it is relevant. The  
14 mere fact that it was put to the voters and a campaign was  
15 run in order to have that put into place I don't think  
16 immunizes a finding or prevents a finding of relevance  
17 because it was put to the city council in the first place  
18 and then put to the voters through the city council's  
19 action as a result of actions taken by Mayor Isbell and,  
20 at his urging, members of the city council. Oh, and  
21 because Mayor Isbell's pact is the one that is then  
22 creating the campaign materials in order to have the  
23 charter amendments approved.

24 So, I don't think that that immunizes the existence of  
25 the -- of the changes or the redistricting choices that

1 city council made to implement them from a relevance  
2 finding.

3 MR. NAJVAR: Would that apply also, Your Honor,  
4 to the communications that come back from the voters?

02:19:52

5 Like, for example, some of those e-mails attach the  
6 results of the calls that went out. I don't think that  
7 would be relevant. Even if the pact's communications to  
8 the voters are relevant, the communications back aren't  
9 relevant to what the intent was of the pact.

02:20:07

10 THE COURT: The only -- what is relevant is the  
11 type of information sought on the calls and the way in  
12 which it is described, which, again, are an effort to  
13 isolate out how at-large districts would vote as compared  
14 to single-member districts if elections were held on the  
15 moment of the survey that was taken and the calls.

02:20:27

16 So I think that there is a basis, a theory of  
17 relevance there that is sufficient. And the volume is not  
18 so large. The documents have already been provided; and  
19 many of them, as I said, are very close to what was  
20 publicly available. Some are not; and those are the ones  
21 that are the most critical, that are critical in the sense  
22 that they are not otherwise available to the plaintiffs.  
23 I believe that this is sufficient for a finding of both  
24 relevance and proportionality.

02:20:55

02:21:15

25 The final tranche of documents go back -- and this is



1 labeled as Yates 375 through 558 or 560, excuse me. These  
2 appear to deal primarily with Mr. Yates' own re-election  
3 and support for Mr. Rick Guerrero's election and I  
4 believe, also, Mr. Larry -- Leroy Stanley's election.

02:22:09 5 These are 2013. They -- they predate the ballot  
6 measure or the city council action to change the charter.  
7 There are some references to efforts to identify in call  
8 surveys non-English speaking households, but I did not see  
9 other references to issues that directly speak to the  
02:23:09 10 concerns that have been made in this -- that are at the  
11 center of this case.

12 But because this shows the way in which the campaigns  
13 were run prior to the change to the city charter and the  
14 redistricting that occurred after the voters approved the  
02:23:44 15 change, I believe it is relevant and not available  
16 elsewhere. And because of the nature of the  
17 communications, which again deals with very minor changes  
18 and very technical questions, and because of the limits  
19 and restrictions put on dissemination, I believe that the  
02:24:08 20 plaintiffs' need for the information outweighs any  
21 possible deterrent effect to associational privileges and  
22 that there is no less restrictive way of obtaining any of  
23 the information. Again, subject to any attorney-client  
24 communications that might be involved.

02:24:32 25 That is where I am in the disclosure requirements. I

1 have not, obviously, looked at the CPC documents because  
2 this is the first I was aware that it was also represented  
3 by Mr. Najvar.

4 And I'm sorry if I keep mispronouncing your name.

02:25:08

5 MR. NAJVAR: I'm used to that, Your Honor.

6 THE COURT: Yes.

7 MR. NAJVAR: And I wasn't their representative  
8 until after Monday's hearing.

9 THE COURT: That's fine. CPC -- I understand.

02:25:17

10 I'm not being critical.

11 The final item to -- and you can tell me because you  
12 know the CPC documents better than I do, much better. I  
13 have never seen them. Are they similar in nature to what  
14 we have just seen?

02:25:33

15 MR. NAJVAR: They are very similar. I mean, if I  
16 flip through them again, in light of what the Court has  
17 discussed today, I might add some nuance. I think they are  
18 substantially similar in terms of the types of  
19 communications.

02:25:46

20 THE COURT: Can you implement the same approach  
21 to disclosure with the same conditions and same limits in  
22 the protective order that I have outlined or do you need  
23 me to go through them as well? Or perhaps an intermediate  
24 step, you can review them in order to implement the same

02:26:04

25 approach; and if there are particular documents that you

1 want to have the Court review in-camera, I'm happy to do  
2 that. You tell me.

02:26:22

3 MR. NAJVAR: I think, given what the Court said,  
4 I can accommodate that. There might be some I would  
5 isolate and ask for an in-camera review.

6 THE COURT: That's fine. That's fine. I don't  
7 have any problem with that at all. Okay.

8 MR. HERRERA: Your Honor, plaintiffs have a  
9 question about --

02:26:39

10 THE COURT: Hang on one second.

11 MR. HERRERA: Yes, Your Honor.

02:27:13

12 THE COURT: We also have this issue of the list  
13 of the individuals who were the recipients of various  
14 mailings. That has been provided. And there is a  
15 citywide list and other similar lists, and these are the  
16 recipients of the communications from 2015 and the  
17 phone/walk list for Carmona, Herbert and Bass support  
18 communications, again, I believe, for 2015, correct? Also  
19 deals with the support for candidates running at large,  
20 and that was a citywide mailer.

02:27:55

21 I am concerned about revealing personal information  
22 such as addresses -- phone numbers and addresses. But I  
23 think the best way of limiting that, further protecting  
24 that information, is to eliminate the names and eliminate  
25 the phone numbers, redact them but do have the addresses

02:28:30

1 so that you can then tell and the zip codes. And the zip  
2 codes may be enough. You tell me.

3 MR. HERRERA: Your Honor, I believe the  
4 plaintiffs would need the names; and we would be willing  
02:28:46 5 to enter into a protective order that is attorney's eyes  
6 only.

7 THE COURT: Why do you need the names?

8 MR. HERRERA: To look at the number of surnames  
9 and the various --

02:28:58 10 THE COURT: Fair enough. You want  
11 Spanish-speaking names or Spanish surnames?

12 MR. HERRERA: Spanish surnames, yes, Your Honor.

13 THE COURT: That's a point that I had not  
14 considered. Is it sufficient, then, to eliminate first  
02:29:15 15 names?

16 MR. HERRERA: Yes, Your Honor.

17 THE COURT: All right. That would have to be  
18 done carefully because some of these refer to the last  
19 name under the rubric "the family", with the name "family  
02:29:26 20 name used" in the first name column. So you couldn't  
21 simply block out a column. You would have to go down the  
22 column and be much more precise about what was blocked.

23 MR. NAJVAR: I'll have to look at it. If that --  
24 okay.

02:29:43 25 THE COURT: There are voter ID numbers. I don't

1 know if you need those.

2 MR. HERRERA: Those -- we don't need those, Your  
3 Honor.

02:29:53

4 THE COURT: Those can be redacted. Telephone  
5 numbers, I don't think you would need those.

6 MR. HERRERA: No, Your Honor.

02:30:19

7 THE COURT: Those can be redacted. And that will  
8 amplify the protections for the privacy interests of the  
9 individuals involved. But, for example, the use of a  
10 citywide list for at-large seats hardly seems to reflect  
11 nuances of strategy that would deter future communications  
12 about strategy.

02:30:44

13 MR. NAJVAR: Right. The only -- the thing I  
14 would ask for redaction on would be the parameters that  
15 were used to select the list; but if the plaintiffs are  
16 already going to have the documents where that is  
17 discussed, then -- that's reflected on the list, as well,  
18 that's the same procedure.

02:30:54

19 THE COURT: Well, but the parameters seem not to  
20 be mysterious. Citywide for at large. And then, there is  
21 one reference to people targeted for the single-member  
22 districts; and I don't believe, again, that that -- that  
23 the compelled production of these lists adds to  
24 information that was previously required to be disclosed  
25 subject to the limits that I have already identified.

02:31:21

1 The walk lists, I believe, fall under the same  
2 category unless there is some alternate basis for treating  
3 them that I have not considered. I'm happy to hear any  
4 suggestions along those lines.

02:31:45

5 MR. NAJVAR: I don't have any, Your Honor.

6 THE COURT: All right. Very good.

7 Matters relating to invoicing, such as CKPS 228, you  
8 can deal with those the same as we discussed earlier.

02:32:22

9 And there are references to how -- to selection  
10 methods that I think are germane, certainly relevant to  
11 the plaintiffs' claims in this case and that cannot be  
12 obtained anywhere else and that are the subject of a  
13 compelling need on the part of the plaintiffs, that would  
14 justify compelled disclosures subject to the limits I have  
15 identified.

02:32:45

16 I think that addresses all of the documents that I was  
17 provided for in-camera review.

02:32:59

18 MR. HERRERA: Your Honor, can the Court state for  
19 the record the Bates numbers for the documents contained  
20 in 2013 e-mails regarding Harrison and Wheeler? We don't  
21 have a specific discussion of Bates Nos. 205 to 233.

22 MS. PERALES: Yates.

23 MR. HERRERA: Yates 205 to 233.

24 THE COURT: Yates.

02:33:17

25 MR. HERRERA: Yates 256 to 308.

1 THE COURT: I'm not sure you need a specific  
2 discussion of each one.

3 MR. HERRERA: Probably not, no, Your Honor; but  
4 these are the ones I'm looking at here.

02:33:33 5 THE COURT: I'm sorry. The numbers again.

6 MR. HERRERA: Of course. Yes, first, Yates 205  
7 to 233.

8 THE COURT: Hold on. Let me make sure I was  
9 getting it.

02:33:52 10 MR. NAJVAR: Your Honor, I don't believe you have  
11 those. Those would be responsive to the other subpoena to  
12 Mr. Yates because those were --

13 THE COURT: Can you treat those in the same  
14 fashion?

02:34:02 15 MR. NAJVAR: Yes, Your Honor.

16 THE COURT: All right. I think that will take  
17 care of it.

18 MR. HERRERA: Two other ranges, Your Honor.  
19 Yates 256 to 308.

02:34:11 20 THE COURT: Hold on. 256 I don't believe --

21 MR. NAJVAR: I think these are all --

22 THE COURT: I think that you still have them.

23 MR. NAJVAR: These are all responsive -- these  
24 were not CKPS documents. These would be dealt with with

02:34:21 25 the Yates subpoena.

1 MR. HERRERA: And then, finally, 309 to 323, also  
2 Yates.

3 MR. NAJVAR: Same thing.

02:34:29

4 THE COURT: All right. So those will be treated  
5 in the same fashion. If I need to review in camera any  
6 specific documents within those categories and ranges, I  
7 assume that you will provide them to me promptly.

8 MR. NAJVAR: Yes, Your Honor.

9 THE COURT: All right.

02:34:40

10 MR. NAJVAR: Can I just ask? I missed a document  
11 range, also. After we talked about 1 through -- the Yates  
12 1 through 162 and before Yates 375 to 560 there was a  
13 range in there.

14 THE COURT: 221 is in there.

02:35:01

15 THE CLERK: 167 to 204.

16 THE COURT: For Yates? No, that's CKPS.

17 MR. NAJVAR: 168 to 204, that sounds right.

18 THE COURT: For Yates?

19 THE CLERK: I wrote down 168 to 204 Yates.

02:35:26

20 THE COURT: I've got -- I'm sorry. Give me the  
21 numbers again.

22 MR. NAJVAR: I think it must be 168 to 204.

23 THE COURT: These are 2015 --

24 MR. NAJVAR: These are --

02:35:48

25 THE COURT: 2015 documents. They deal with some



02:36:18

1 invoices, some campaign photos. They deal with Mr. Bass  
2 and campaign materials supporting him. These appear to be  
3 for a single-member district, and I believe that they  
4 would be subject to disclosure on the same basis. They do  
5 not specifically implicate or specifically address the  
6 amendment to the city charter or the impact of the  
7 redistricting but it is the first post-redistricting  
8 election under the redistricts and I believe that it is --  
9 it contains relevant information, communications other  
10 than the amounts of the invoices perhaps which may be  
11 redacted consistent with our earlier discussion and  
12 subject to the same restrictions on dissemination.

02:36:48

02:37:17

13 I'm going to mark these as an exhibit to this hearing  
14 so that the documents themselves will be available for  
15 appellate review if that becomes an issue. It's a Court  
16 exhibit.

17 Is there anything else that we need to do today?

18 MR. HERRERA: Your Honor, the only other thing  
19 would be scheduling.

02:37:40

20 Well, Your Honor, one more thing about the subpoena to  
21 the Citizens for Positive Change pact. Plaintiffs would  
22 still seek disclosure of any documents that would not be  
23 in Mr. Yates' possession or Mr. Bass's possession.

02:38:21

24 It is the plaintiffs' understanding Citizens for  
25 Positive Change never produced a privileged log or set of

1 responses and objections. Therefore, they also -- the  
2 only documents produced by Citizens for Positive Change  
3 prior to Mr. Najvar's representation of the pact were  
4 disclosure -- finance disclosure reports required by state  
5 law to the city.

02:38:45

6 So the plaintiffs would ask that anything that's not  
7 in Mr. Yates' possession be disclosed.

8 MR. NAJVAR: I have spoken with Mr. Bass since  
9 the hearing, and I am representing Citizens for Positive  
10 Change here. He gave me a copy of what was provided,  
11 which is limited to the publicly-filed reports. Mr. Bass  
12 attached a cover letter that, obviously, states his  
13 objection. First of all, he says I'm giving you  
14 everything that I have except for the bank statements.  
15 The only thing he withheld was the bank statements.

02:39:03

02:39:23

16 And Mr. Bass, after speaking with him, I understand  
17 more of the situation with that organization. He was  
18 asked to be the treasurer, but he literally had no  
19 interaction in terms of anything that the pact did other  
20 than to write checks to people. I think there were three  
21 checks issued by the pact.

02:39:41

22 All of the documents that go to what Citizens for  
23 Positive Change did are actually already logged and  
24 responsive to the subpoena to the Yates company, and those  
25 are some of the documents we have already discussed. So

02:39:59

1 it's literally true. I asked -- Mr. Bass told me  
2 yesterday he didn't know what Citizens for Positive Change  
3 did until he got the mail piece at his door. I mean, he  
4 literally had no interaction in terms of with Mr. Yates or  
5 anybody else working on the advertisements or any  
6 decisions that the pact made.

7 And so, I'm not saying there are not documents; but  
8 the documents would come in response to the subpoena to  
9 Jeff Yates. Mr. Bass has no documents.

10 MR. HERRERA: Your Honor, to the extent that any  
11 of this -- first of all, the plaintiffs object to anything  
12 that Mr. Najvar says that Mr. Bass said to not be  
13 testimony. To the extent it is testimony, it would be  
14 hearsay.

15 THE COURT: I'm a little confused though. If you  
16 are going to get them through Mr. Bass then what is the  
17 issue of or through Mr. -- if they are going to be  
18 produced, what does the -- is it critical that we focus on  
19 who is going to be the party responding to the request,  
20 which appears to be what we are arguing about, unless I  
21 have lost something in the exchange.

22 MR. HERRERA: That's -- I believe that's right,  
23 Your Honor. Plaintiffs don't believe that Mr. Bass is the  
24 end of the line when it comes to who is in custody of the  
25 pact's documents. We don't have -- plaintiffs don't have

1 reason to doubt Mr. Bass's representations to plaintiff so  
2 far, but we also don't believe that Mr. Bass is the pact.

02:41:43

3 MR. NAJVAR: And just a procedural point, Your  
4 Honor. You mentioned evidentiary issues. They have asked  
5 for a discovery conference with regard to Mr. Bass's  
6 subpoena. There is no motion to compel on file.

7 THE COURT: It doesn't have to be a motion. This  
8 is a conference that precedes any motion.

02:41:54

9 MR. NAJVAR: Right. And so, in terms of that,  
10 the evidentiary burden is not the same. It's not like we  
11 are here --

12 THE COURT: But you still need to articulate the  
13 basis for your refusal to provide the information.

02:42:06

14 MR. NAJVAR: Right. He objected to me talking  
15 about what Mr. Bass told me. I'm just explaining.

16 THE COURT: That's fine. That's fine. Is the  
17 information going to be produced?

18 MR. NAJVAR: The information --

02:42:16

19 THE COURT: Subject to the restrictions and  
20 categories we have identified.

21 MR. NAJVAR: Right. The information just comes  
22 from Mr. Yates, not from Bass or anybody else.

23 THE COURT: Does that matter at this juncture?

02:42:27

24 MR. HERRERA: I believe it does matter beyond  
25 Mr. Yates. Mr. Bass has to retrieve the documents even if

1 not in his possession.

2 THE COURT: What does that -- but if Mr. Yates is  
3 going to be the one from whom he will retrieve it, does  
4 that matter? What is the distinction that creates a  
5 difference here?

02:42:43

6 MR. HERRERA: There is no distinction, Your  
7 Honor, just that Mr. Yates is one person in custody of  
8 pact documents; and it is clear from the privilege logs we  
9 have seen for these other two subpoenas that there are  
10 other -- there are likely other people in custody of  
11 documents pertaining to the pact.

02:42:58

12 THE COURT: Unless they are documents that cannot  
13 otherwise be obtained through the pact and Mr. Yates, I  
14 don't understand the need to require a duplicative  
15 production simply because it is in the possession of  
16 someone else. That's where I am not connecting with your  
17 argument.

02:43:19

18 MR. HERRERA: Of course, Your Honor. We don't  
19 need to get the e-mails that Mr. Yates has twice, for  
20 example, or the list that Mr. Yates has twice. But if  
21 there are, for example, communications between Mr. Scott  
22 and Mr. Isbell pertaining to the pact, for example --

02:43:33

23 THE COURT: That would not otherwise be contained  
24 in what Mr. Yates has.

02:43:46

25 MR. HERRERA: Correct, Your Honor.

1 THE COURT: That is fine. But the question is  
2 whether there are -- whether there are communications or  
3 information that is not otherwise contained in what  
4 Mr. Yates has, and that's what we are asking -- what I  
5 understood you to be asking.

02:44:07

6 So, Mr. Najvar, are there?

7 MR. NAJVAR: No.

8 THE COURT: Have you searched to be sure that  
9 that is a wholly accurate statement?

02:44:19

10 MR. NAJVAR: I talked -- well, I talked to  
11 Mr. Yates -- I mean, Mr. Bass for more than half an hour  
12 and verified this several ways. He does not have  
13 possession of any of them. I think to the extent that  
14 they are trying to use this subpoena to require Mr. Bass  
15 to go to Mr. Isbell's e-mail account and get stuff that  
16 might not have been in what we have already put together  
17 for Mr. Yates, it sounds like that is what they are asking  
18 for and mister -- that goes beyond the scope of the  
19 subpoena. Mr. Bass is not responsible for people he  
20 doesn't control.

02:44:35

02:44:51

21 MR. HERRERA: The subpoena, Your Honor, is not to  
22 Mr. Bass. The subpoena is to the pact. And it's obvious  
23 that Mr. Bass is not the only person in the pact.  
24 Therefore, it would require Mr. Bass or whomever to go to  
25 the other people who would have custody of the requested

02:45:07

1 documents. The subpoena is not drawn --

2 THE COURT: Who else would he go to besides  
3 Mr. Yates?

4 MR. HERRERA: We don't fully know, Your Honor.

02:45:20

5 THE COURT: Let me ask Mr. Najvar. Who else has  
6 custody or control?

7 MR. NAJVAR: My understanding -- and I'll look,  
8 again, and verify this now that I have all the reports  
9 that are filed. But my understanding is everything would

02:45:32

10 come from Mr. Yates, which we already have. There were  
11 only three checks written. The only consulting check, I  
12 believe, went to Mr. Yates. He was the one hiring the  
13 subcontractors which are already logged here. PMI did the  
14 phoning. Spencer Neumann for the mail. These are  
15 documents already in the privileged log.

02:45:47

16 So all the e-mails between Isbell and Scott and Yates  
17 and then between Yates and the vendors to CPC have already  
18 been produced or logged and assembled in terms of the  
19 subpoena to Jeff Yates.

02:46:05

20 MR. HERRERA: Your Honor, to the extent that  
21 we're hearing about representations from Mr. Bass,  
22 Mr. Bass told me in a phone call that he had gone to --  
23 that he had -- I'm sorry. That he had not spoken with  
24 anyone, I believe, about the documents. The only person  
25 he has spoke with in preparing his response to the

02:46:31

1 subpoena was his wife, who helped him put it together,  
2 basically. And what plaintiffs received was a letter, a  
3 short letter, as well as the campaign finance disclosures.  
4 That's just --

02:46:49

5 THE COURT: Again, you just heard counsel's  
6 representation about who had custody of any duplicative  
7 e-mails. I would urge you to verify that and report back  
8 to plaintiffs' counsel. And if there is any issue that  
9 remains, you can bring it up with me; but I don't see any

02:47:06

10 basis at this point to not to -- to require additional  
11 duplicative production just as a means of double-checking  
12 that what has been described is, in fact, accurate.  
13 That's what I hear you requiring.

14 MR. HERRERA: Yes, Your Honor. Thank you.

02:47:30

15 THE COURT: Not absent any specific basis to  
16 believe what has been said is, in fact, not accurate.

17 MR. HERRERA: No, Your Honor.

18 THE COURT: All right. In that case, what kind  
19 of scheduling order are you looking for? Have you  
20 conferred with opposing counsel?

02:47:47

21 MR. HERRERA: We have not.

22 THE COURT: Perhaps that would be a wise move.

23 MR. HERRERA: Thank you, Your Honor.

24 THE COURT: Would you like to use the jury room  
25 to do so, and I can come back in half an hour?

02:47:58



1 MR. HERRERA: That would -- I don't know if we  
2 need half an hour. 15 minutes, I think, might suffice  
3 unless -- this would be discussion with defense counsel, I  
4 believe, as well, for the city.

02:48:15

5 THE COURT: Are they here?

6 MR. HERRERA: Yes, Your Honor.

7 THE COURT: All right. Very good. You are  
8 welcome to stay in the courtroom and use this space as  
9 well.

02:48:23

10 MR. HERRERA: Thank you, Your Honor.

11 THE COURT: Thank you. I'll be back in about 15  
12 minutes.

13 (Recess from 2:48 p.m. to 3:14 p.m.)

03:14:07

14 THE COURT: Were you able to confer productively  
15 on a schedule?

16 MR. HERRERA: Yes, Your Honor. On the scheduling  
17 after discussing --

18 THE COURT: You may be seated, please.

03:14:15

19 MR. HERRERA: After discussing with counsel for  
20 the city and Mr. Najvar, plaintiffs would ask that --

21 THE COURT: And let me get an appearance from  
22 counsel for the city, please.

23 MS. AHLRICH: Katy Ahlrich for the City of  
24 Pasadena.

03:14:26

25 THE COURT: Thank you. Go ahead, please.

1 MR. HERRERA: Plaintiffs would ask that the Court  
2 extend all discovery by 60 days beyond the date the  
3 documents are produced, and we have agreed with Mr. Najvar  
4 on a production date of next Friday.

03:14:41

5 THE COURT: Okay. So what is the current  
6 discovery date cut-off?

7 MR. HERRERA: Currently the 15th, Your Honor, of  
8 this month. Sorry. February 15th.

03:14:58

9 THE COURT: Okay. Can you get me the up-to-date  
10 docket sheet? It should be in there. Do you have one,  
11 Jesus, handy?

12 CASE MANAGER: I've got it for you.

13 THE COURT: It's changed somewhat. I have last  
14 week's or earlier this week's.

03:15:12

15 MS. AHLRICH: Your Honor, if I may, the city  
16 would agree to that; but we would also request that if we  
17 do have --

18 THE COURT: I'm sorry. Request for what?

03:15:23

19 MS. AHLRICH: I'm sorry. The city would agree to  
20 the extension of the discovery deadline; but we would ask  
21 the Court to consider resetting the trial date, as well.

22 THE COURT: The question is whether it all needs  
23 to be rolled forward 60 days.

24 MS. AHLRICH: Yes, Your Honor.

03:15:35

25 THE COURT: And it looks. Okay. I don't have

1 any objection to doing that. Is anybody opposed?

2 MR. HERRERA: No, Your Honor.

3 THE COURT: We'll issue an amended scheduling  
4 order that will extend all the deadlines, starting with  
5 the February 15th deadline, 60 days.

03:15:47

6 MR. HERRERA: Yes, Your Honor. Before we discuss  
7 a problem or an issue we have with -- well, the only other  
8 issue then, Your Honor, is having to do with the Citizens  
9 for Positive Change and production there; and it seems  
10 that we are at somewhat of an impasse with counsel for  
11 Citizens for Positive Change in that the pact doesn't  
12 believe it has to go to donors to retrieve documents.

03:16:09

13 THE COURT: Were documents sent to donors,  
14 because they weren't for CKPS?

03:16:28

15 MR. NAJVAR: I'm sorry, Your Honor.

16 THE COURT: Were documents sent to donors?

17 MR. NAJVAR: No, not that I'm aware of.

18 THE COURT: Were there any e-mails for  
19 communications sent to donors from CPC or received from  
20 donors by CPC responsive to the subpoena?

03:16:40

21 MR. NAJVAR: Not that I'm aware of.

22 THE COURT: Check again and make sure. If there  
23 are none, then I believe that that satisfies your inquiry.

24 MR. HERRERA: There is another check, Your Honor.

03:16:57

25 For example, one of the donors is the mayor. He was

1 responsible for 84 percent of the funding for the pact.

2 THE COURT: If Mayor Isbell communicated with  
3 CPC, those would be responsive and subject to the  
4 categories of production that we have already gone  
03:17:15 5 through. I thought you were referring primarily to other  
6 donors.

7 What was Mayor Isbell's role in the pact? Was he an  
8 officer?

9 MR. HERRERA: We don't know, Your Honor. The  
03:17:27 10 only officer listed for this pact, as is usual from what I  
11 understand, is the treasurer; and that was Mr. Bass.

12 THE COURT: All right. So besides Mr. Bass was  
13 Johnny Isbell, J.J. Isbell involved?

14 MR. NAJVAR: I believe there were -- it was  
03:17:43 15 substantially the same as with --

16 THE COURT: So any e-mails to and from or other  
17 communications to and from the pact and Isbell and the  
18 Isbells, Richard Scott and Mr. Bass, as well as Mr. Yates  
19 and the vendors would obviously be called for in the same  
03:18:02 20 fashion they were for the CKPS subpoena. Do you have any  
21 difficulty with that?

22 MR. NAJVAR: We have no problem with that. That  
23 stuff is already here in response to the Yates subpoena.

24 THE COURT: So I'm trying to figure out what the  
03:18:16 25 issue is. The non-Isbell donors?

1 MR. HERRERA: That would be -- we would include  
2 that with donors, Your Honor. That's not the only --  
3 that's the --

03:18:29

4 THE COURT: What I just -- I'm sorry to interrupt  
5 you. I don't mean to, Mr. Herrera. I have just been told  
6 that there are no communications responsive to the request  
7 to or from donors other than the individuals identified  
8 already, the Isbells, Scott and Mr. Bass.

03:18:51

9 MR. HERRERA: That's right, Your Honor. But it  
10 has been -- we have heard -- we have been told that  
11 Mr. Bass doesn't believe he has to go to other people,  
12 other donors to see if there -- or other principals to see  
13 if there are communications between or among them. And so  
14 the issue -- the bigger issue is --

03:19:11

15 THE COURT: There is nothing to or from CPC and  
16 these other donors that has turned up so far. We have  
17 just been told there is nothing.

03:19:29

18 MR. HERRERA: As far as we're concerned -- Your  
19 Honor, Mr. Najvar was, from what we understand, retained  
20 as counsel on Monday night or Monday afternoon and --

21 THE COURT: I have already asked him to verify  
22 that there are no communications between CPC and these  
23 other donors responsive to the subpoena. Does that take  
24 care of your concern?

03:19:47

25 MR. HERRERA: Yes, Your Honor. There is another

1 check.

2 THE COURT: All right. And can you do that by  
3 this coming Monday the 15th?

03:20:00

4 MR. NAJVAR: Absolutely. And that would be --  
5 make sure -- communications that went from anybody  
6 about -- from any of the donors about CPC to CPC --

7 THE COURT: About any of the issues relating that  
8 are responsive to the subpoena.

9 MR. NAJVAR: Right.

03:20:16

10 THE COURT: To and from CPC and any of its  
11 principals like Mr. Isbell.

12 MR. NAJVAR: Mr. Isbell, Mr. Yates, J.J. Isbell.

13 THE COURT: Richard Scott, vendors, that's  
14 exactly right.

03:20:29

15 MR. NAJVAR: Right. Right.

16 THE COURT: All right. With that check and the  
17 amended scheduling order, have we done what we need to do  
18 today?

19 MR. NAJVAR: I believe so, Your Honor.

03:20:40

20 MR. HERRERA: No other issues, Your Honor.

21 THE COURT: All right. Very good. Thank you.

22 *(Proceedings concluded at 3:20 p.m.)*

23 *Date: February 28, 2016*

24 ***COURT REPORTER'S CERTIFICATE***

25 *I, Laura Wells, certify that the foregoing is a*

1 correct transcript from the record of proceedings in the  
2 above-entitled matter.

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/s/ Laura Wells

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Laura Wells, CRR, RMR

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